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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/772,261	01/29/2001	Gordon James Smith	ROC920000268US1	8891

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EXAMINER
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NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



## Office Action Summary

Application No.

09/772,261

Applicant(s)

SMITH, GORDON JAMES

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Examiner

Freda Nelson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This is in response to a letter for a patent filed on January 29, 2004 in which claims 1-17 were presented for examination. Claims 1-17 are pending.

### ***Claim Rejections - 35 USC § 101***

1. Claims 1-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-17 only recite an abstract idea. The recited steps of merely prompting a purchaser with a purchase option for merchandise; prompting the purchaser for any users associated with the purchaser; calculating a second merchandise based upon the quantity of said users; and permitting the purchaser to

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purchase merchandise at the second price does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an idea of how to adjust merchandise pricing.

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 1-17 are deemed to be directed to non-statutory subject matter.

2. In order to overcome the 101 rejection above, the following preamble is suggested:

"A computer implemented method for ---", or something similar. Also, in the body of the claim include at least one structural / functional interrelationship which can only be computer implemented.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 4-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Among et al. (US PG Pub 2003/0110063).

4. In claims 1 and 4-5, Among et al. disclose that once the buyer has agreed to purchase the final option, the buyer inputs 501 the name, billing address, company name, phone contact and e-mail address of the person that is traveling and is the credit card holder; and once the "continue" button is clicked, the buyer is prompted for additional information to complete the reservation. For example, the names of any additional travelers and/or frequent flyers number information may be input 505 (paragraph 0047). Among et al. disclose that once the buyer has provided parameter information for the selected components of a tour package, a click on the "price this itinerary" button will take all variables into consideration and return with a selection of the lowest price options that may interest the buyer, 314 (paragraph 0044). Among et al still further disclose that the flexibility and the ease with which the different suboptions may be combined, priced and recombined in the different options and then re-priced online via a network connection, is an advantage of the present invention (paragraph 0044). Although Among et al. disclose that once the "continue" button is clicked, the buyer is prompted for additional information to complete the reservation. For example, the names of any additional travelers and/or frequent flyers number information may be input 505 (paragraph 0044). Among et al. is silent about calculating a second merchandise price based upon a quantity of said any users indicated in step (b). However, this feature is deemed to be inherent to the Among et al. system because as paragraph 0044 shows that once the buyer has provided parameter information (additional travelers) for the selected components of a tour package, a click on the "price this itinerary" button will take all variables into consideration and return with a

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selection of the lowest price options that may interest the buyer, 314 wherein suboptions may be combined, priced and recombined in the different options and then re-priced online via a network connection. The Among et al. system would be deemed inoperative if the system could not calculate (or re-price) the different travel options.

5. In claim 7, Among et al. disclose a method and system for managing a tour product purchase and more specifically, for permitting vendors to directly manage tour product inventory and in real-time (paragraph 0003). Among et al. further disclose a method and apparatus that allows a vendor to instantly confirm and manage inventory for all selected suboptions of any components sold by the vendor, which enables a quick and easy electronically ticketed transaction (paragraph 0013).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Among et al. (US PG Pub 2003/0110063) in view of Pugliese, III et al. (US PG Pub 2001/0016825).

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7. In claims 2, Among et al. does not disclose that step (a) requires the purchaser to enter information with a data storage device. Pugliese, III et al. disclose that upon the first, initial reservation, the passenger is issued a plastic identification card which carries a unique card number (paragraph 0012). Pugliese, III et al. further disclose that at the machine, the passenger passes or swipes the identification card through a magnetic card reader attached to the special ATM. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Among et al. to include data storage device (plastic I.D. card) of Pugliese, III et al. in order to provide the convenience of not having to physically input personal data each time a purchase is made.

8. In claims 3 and 6, Pugliese, III et al. disclose that upon the first, initial reservation, the passenger is issued a plastic identification card which carries a unique card number (paragraph 0012). Pugliese, III, et al. disclose that on the basis of the received passenger I.D. number, which is stored on the card, the central computer will send to the remote terminal information which identifies the flight number and flight destination along with a verification of the passenger identification, which will then be verified with the picture ID presented by the passengers and accompanying adult passengers (paragraph 0013).

### ***Conclusion***

9. The following is an examiner's statement of reasons for allowance:

A) the prior art for example:

(1) Among et al. (US PG Pub 2003/0110063) discloses prompting the purchaser with a purchase option and prompting the purchaser for any users associated with the purchaser.

B) However, in regard to claims 8-17, the prior art does not teach or suggest specifically prompting the purchaser with purchase options including a first fuel price; and calculating a second fuel price based on quantity of passengers.

10. The examiner has cited prior art of interest, for example:

1) Kolls (Patent Number 6,601,039), which discloses a gas pump control system having access to the Internet.

2) Marion (Patent Number 6,073,840), which discloses a fuel dispensing and retail system providing for transponder prepayment.

3) Wilson (US PG Pub 2003/0200008) discloses a loyalty rewards for cash customers at a fuel dispensing system.

11. Claims 8-17 would be allowable if rewritten to overcome the rejection under 35 U.S.C § 101 and to include all the limitations of the base claim and any intervening claims. As allowable subject matter has been indicated, applicant's response must either comply with the formal requirements or specifically traverse each requirement not complied with. See 37 C.F.R. § 1.111(b) and section 707.07(a) of the M.P.E.P.




12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda Nelson whose telephone number is (703) 305-0261. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Freda Nelson  
Examiner  
Art Unit 3629

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